IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-04-2005

CORAM

THE HONOURABLE MR. JUSTICE N.KANNADASAN

W.P.No.31204 of 2003
and
WPMP Nos.37990 and 38802 of 2003

N.Muthuraman .. Petitioner

Vs.

1.The State of Tamil Nadu
rep., by its Secretary to Government,
Housing and Urban Development,
Fort St. George,
Chennai-600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai-600 035.

3.The Allottees Service Manager,
Tamil Nadu Housing Board,
Besant Nagar Division,
Chennai-600 020.

4.T.Shanmugam .. Respondents

Writ petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent in G.O.Ms.No.276, Housing and Urban Development (HB5) Department, dated 31.10.2003 and to quash the same and direct the first respondent to re-allot plot No.3, at Lattice Bridge Road, Thiruvanmiyur in favour of the petitioner and to hold public auction for plot No.2, at Lattice Bridge Road, Thiruvanmiyur forthwith.

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For Petitioner : Mr.AR.L.Sundaresan

For Respondent-1 : Mr.S.Srinivasan,
Government Advocate.

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For Respondents-2&3 : Mr.D.Veerasekaran

For Respondent-4 : Mr.K.M.Vijayan,
Senior Counsel for
M/s.La Law

ORDER

The above writ petition is filed challenging the order in G.O.Ms.No.276, Housing and Urban Development (HB-5) Department dated 31.10.2003 of the first respondent and for a consequential relief.

2. The plots bearing Nos.2 and 3 at Thiruvanmiyur, Chennai was originally allotted to the fourth respondent on 27.2.1981, consequent to the direction of the Government in its letter No.19461/HA-1/74-2 dated 20.11.1974 for commercial purposes. The fourth respondent, as per allotment order, took possession of the plots on 9.5.1981. Subsequently, the petitioner herein has submitted a representation to the effect that the fourth respondent is owning house sites in Survey No.40/1 at Kandansavadi Village and at Palavakkam and hence the allotment made in favour of the fourth respondent is contrary to rules. On receipt of the said representation, the allotment was withheld by the Government and aggrieved against the same, the fourth respondent filed W.P.No.6968 of 1981 and obtained an order of stay. The petitioner herein also filed W.P.No.1959 of 1982 to cancel the allotment made in favour of the fourth respondent. This Court disposed of both the writ petitions, with a direction to the first respondent to pass orders by considering the representations of both the parties. Subsequently, the Government passed orders in G.O.Rt.No.167, Housing and Urban Development Department dated 16.4.1984, cancelling the allotment made in favour of the fourth respondent and rejecting the request of the petitioner herein to allot the plot No.3 and the Tamil Nadu Housing Board was directed to sell the plots and dispose of the plots as per the then existing Rules. Aggrieved against the said order, the fourth respondent has filed a writ petition No.512 of 1984 and also obtained an order of stay. In the meanwhile, the matter was again examined and the Government has passed an order in G.O.Ms.No.38, Housing and Urban Development Department dated 10.1.1990, cancelling the orders issued in G.O.Rt.No.167, Housing and Urban Development Department dated 16.4.1984 and the fourth respondent was permitted to retain the plots subject to conditions as set out therein.

3. Once again, the petitioner herein has submitted a representation on 12.6.1991, alleging that the fourth respondent is not eligible for the allotment of the plots and he is actually in possession of plot No.3 and the same should be allotted to him and also undertook to withdraw the writ petitions filed by him in W.P.Nos.1334 of 1991 and 1744 of 1991 in the event of allotment of plot No.3 in his favour. The first respondent, based on the report of the second respondent as well as on the basis of the statement of the petitioner to the effect that he is actually

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in possession of plot No.3, cancelled the earlier order issued under G.O.Ms.No.38, Housing and Urban Development Department dated 10.1.1990 and issued a revised order in G.O.Ms.No.622, Housing and Urban Development Department dated 12.7.1995, allotting plot No.3 to the petitioner herein subject to conditions that he withdrew the writ petitions filed by him and to initiate separate proceedings to cancel the allotment of plot No.2 in favour of the fourth respondent for submitting a false declaration that he was ex-owner of a land which is subject to acquisition. The fourth respondent has challenged the above mentioned order in W.P.No.11592 of 1995. This Court passed a common order on 5.11.1999 in W.P.Nos.11592 of 1995, 1334 of 1991 and 1744 of 1991 wherein G.O.Ms.No.622, Housing and Urban Development Department dated 12.7.1995 was set aside and the Government was directed to pass fresh orders after hearing both parties.

4. In pursuance of the order dated 5.11.1999, in the writ petitions referred to supra, a further enquiry was conducted by the first respondent and an order was passed in G.O.Ms.No.276, Housing and Urban Development Department dated 31.10.2003 wherein the allotment made already in respect of fourth respondent pertaining to plot Nos.2 and 3 in G.O.Ms.No.38, Housing and Urban Development Department dated 10.1.1990 was upheld by holding that there are no irregularities in the process of allotment. The said Government Order is under challenge in the present writ petition.

5. The learned counsel for the petitioner would contend that as between the petitioner and the fourth respondent, preferential treatment should be given to the petitioner by allotting the plots. The property in question comprised in Survey No.120/3, Thiruvanmiyur village and that the petitioner was very much in possession of a portion of the property in survey No.120/3 from the year 1973 onwards and as such, he has better rights. It is further contended that the petitioner was carrying on hardware business in the land in question and even though as per the revenue records, the possession was recognised with an extent of three cents therein, he was using the entire portion of the land and as such, when originally a lay out plan was drawn in respect of Thiruvanmiyur Neighbourhood Scheme, the said portion of the land measuring an extent of three cents was excluded and the remaining portion measuring about nine cents was marked as plot No.3 and hence, he has chosen to give an application for the allotment of entire plot No.3. The said application submitted by the petitioner was rejected by the Tamil Nadu Housing Board by its proceedings dated 27.12.1978.

6. Learned counsel for the petitioner would further add that the fourth respondent makes a claim for allotment of the land only on account of his occupation in Survey No.30/1, which is totally a different piece of land and as such, he cannot be preferred than the petitioner in the matter of allotment. Even otherwise, the fourth respondent has chosen to claim the allotment under ex-owner's category, which is not correct since the lands belonging to him were not acquired and he was only an unauthorised

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occupant of land in survey No.30/1. Further, though the fourth respondent has chosen to submit an application at an earlier point of time viz., during 1974 for a plot approximately measuring 1-1/2 grounds, he was able to secure an order of allotment of a land measuring about 3-1/2 grounds, which would show that the order of allotment was made for extraneous reasons. It is also contended that the fourth respondent has violated the terms of allotment by suppressing the fact that he did not own any other plot, even though he owns two plots one at Kandansavadi and another at Palavakkam. On earlier occasion when the Government has passed order in G.O.Ms.No.622, Housing and Urban Development Department dated 12.7.1995, by allotting plot No.3 to the petitioner herein, he was directed to pay a substantial amount viz., a sum of Rs.4,69,440/- as initial deposit and fixed the total value of the plot as Rs.11,73,600/- (at the rate of Rs.6,28,425/- per ground as cost of the plot) and the petitioner has also paid the initial deposit as early as on 12.9.1995. However, the fourth respondent is able to acquire the property for a meagre amount at the rate of Rs.26,000/- per ground and as such, he cannot be permitted to have an unjust enrichment of the State's exchequer which vitiates the impugned order. The Government has not even chosen to revise the price of the land with reference to the date of the allotment and instead, the earlier order canceling the allotment in favour of the fourth respondent which was set aside and he was permitted to pay a meagre amount towards cost of the plot. The learned counsel further contended that the scheme as contemplated under Section 39 of the Tamil Nadu State Housing Board Act, 1961 (hereinafter called as Act) should be implemented by treating all parties equally and no power is traceable under the said provision for allotment under ex-owner's category; assuming Section 155 of the Act comes into play, it is only a residuary power, and no order can be passed contrary to the express provisions of the Act so as to destroy the very object of the Act itself; that an allotment can be made only under Section 72 of the Act which prescribes a procedure and in the instant case, the said procedure is violated and as such, the impugned order is liable to be set aside. The learned counsel also placed reliance upon the number of decisions of the Apex Court pertaining to the arbitrary exercise of discretionary power vest with the Government in the matter of allotment. If the petitioner does not have a better right, his right could be treated on par with that of the fourth respondent, since the petitioner is an encroacher of the disputed land whereas the fourth respondent is an encroacher of the property of a trust which was acquired.

7. Per contra, Mr.K.M.Vijayan, learned Senior counsel would contend that as between the petitioner and the fourth respondent, undoubtedly a preferential right vests upon the fourth respondent; since the name of the fourth respondent finds place even in the award passed in the land acquisition proceedings pertaining to Thiruvanmiyur Neighbourhood Scheme; and it is not correct to state that the fourth respondent has applied for a particular extent of plot whereas he was allotted a larger extent of plot; and final order of allotment came to be passed consequent to series of correspondences between the fourth respondent as well as the

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Government and the Tamil Nadu Housing Board right from the year 1974; and the fourth respondent paid the entire amount long back and in fact, the price was fixed on par with the price fixed in respect of other commercial plots prevailing in the year 1981 and he has started paying the amounts in instalments from the year 1981 itself. Learned senior counsel further contends that the petitioner being an encroacher and a neighbour of the disputed property cannot have any vested right, more particularly when the fourth respondent who is one of the affected person consequent to the acquisition is entitled for the allotment as a matter of right in terms of Section 39 r/w 155 of the Act; and the possession of the petitioner on the disputed land was not accepted by the authorities which is a finding of fact and the same cannot be interfered with; and even otherwise, the petitioner has not established at any point of time that he was in possession of plot No.3. Learned senior counsel would further add that even though the Housing Board has passed an order of provisional allotment as early as on 27.12.1981 and a regular order of allotment was made on 6.4.1981, the petitioner has submitted a representation for the first time only on 16.4.1981. However, consequent to the provisional allotment order as well as the regular allotment order, the fourth respondent came to be in possession of plots on 9.5.1981, and the allegation of the petitioner that the fourth respondent has suppressed the fact that he was owning two house sites is contrary to the facts. It is further contended that even assuming that the said statement is true, as per G.O.Ms.No.2063, Housing and Urban Development Department dated 9.11.1979, there is no bar for the allotment of a commercial site, if an individual is owning a house site. Learned counsel would also contend that the house site which is comprised in Survey No.40/1 at Kandansavadi, actually belongs to the Government and the land is classified as a Government Poramboke and the house site which was owned by him at Palavakkam was sold prior to the date of declaration made by him. Even otherwise, as per the Government Order dated 9.11.1979, the fourth respondent was not owning a house site in any municipal Corporation, Special Grade and 'A' Grade Municipalities and the said site does not fall under the said category. As regards the value of the plot is concerned, the value was arrived at the rate of Rs.26,000/- per ground which was the value fixed in respect of all the commercial plots during 1981 and the fourth respondent has chosen to part with substantial amounts by way of initial deposit as well as by instalments and the entire amount was paid in the year 1991 itself and as such, it is not correct to state that the fourth respondent has made unjust enrichment. He would also contend that the petitioner has no locus standi to maintain the above writ petition and the same is liable to be dismissed on that score also.

8. Heard the learned Government Advocate for the first respondent and the Legal Advisor for the second and third respondents.

9. I have considered the rival contentions of the learned counsels appearing on either side.

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10. In the light of the contentions urged by the learned counsels, the following points emerges for consideration viz.:-

(i) As between the petitioner as well as the fourth respondent, who is having the preferential claim?

(ii) Whether the power is traceable for allotment of the plot with reference to the provision of law?

(iii)Whether the fourth respondent has violated the terms and conditions of the allotment viz., suppressing the fact that he was owning plots already and if so, what is the consequence?

(iv) Whether the impugned order is unsustainable in law on the ground that though the application was submitted for a smaller extent, a larger extent of plot was allotted?

(v) Unjust enrichment by the fourth respondent

(vi) Locus standi of the petitioner to maintain the above writ petition.

Point (i):- As between the petitioner as well as the fourth respondent, who is having the preferential claim?:-

A perusal of the representation dated 16.4.1981 of the petitioner seeking allotment discloses that he is in occupation of plot bearing Door No.73-C, Lattice Bridge Road, wherein he has constructed a building and running a hardware shop and he came to know that Tamil Nadu Housing Board is about to dispose of plot No.3 which is adjacent to his shop either by auction or by way of outright sale; and if the said property is sold to any third party it will be a hindrance for running his business and also there is no approach road to backyard of his premises; and he is using the same as a passage since the property was vacant and accordingly, requested for the allotment of plot No.3. The said application was rejected by the Housing Board in its proceedings dated 24.4.1981. From the above representation, it is clear that even according to the petitioner he has been using the vacant plot to reach his backyard of the premises owned by him and as such, he is entitled for the allotment on the ground that he is in possession of a portion of plot No.3, has no substance. Even though an attempt is made by referring to certain 'B' memos issued in favour of the petitioner, a mere reference of survey No.120/3 in the said 'B' memos will not establish the actual possession of the petitioner in a portion of plot bearing No.3. Even in the affidavit filed in support of the writ petition, the petitioner has made a reference that though he was in possession of a larger extent of land, he has put up a construction upon a land measuring an extent of three cents in Survey No.120/3, Thiruvanmiyur Village and when the Housing Board initiated steps to implement the scheme, the Housing Board has excluded a portion of the land under its occupation viz., three cents and the remaining portion of land is demarked as plot No.3. The relevant portion of the averment in paragraph 3 of the affidavit is extracted hereunder:-

"It is respectfully submitted that however the Tamil Nadu Housing Board while preparing a Layout Plan originally in Thiruvanmiyur neighbourhood Layout in Old

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Survey No.120/3, excluded a portion of the land viz., 3 cents of land occupied by him for his Hardware business as there was a superstructure and demarked the remaining portion of land occupied by him, as plot No.3. Hence, the petitioner made a representation to the Tamil Nadu Housing Board for retaining the entire plot No.3, measuring about 9 cents for running his business, by his letter dated 21.11.1978."

In the light of the above statement, it is clear that the petitioner was not in possession of plot No.3 and at best, it can be construed that he has encroached upon a portion of a land adjacent to plot in question.

As regards the claim of the fourth respondent is concerned, it is not in dispute that right of the fourth respondent is recognised in the enquiry pertaining to the award no.6 of 1973 consequent to the land acquisition proceedings. Even in the notice dated 26.3.1973, issued by the Special Deputy Collector (Land Acquisition), Madras-1 relating to the award enquiry, the details pertaining to the fourth respondent are set out as hereunder:-

"PARTICULARS OF THE LANDS

Chingleput District Saidapet District.
No.140 Thiruvanmiyur

Name of the owner or Regd. Holder or other person interested in the land	Wet or Dry	S.No.	Nature of unauthorised construction in the Land after the publication of the Notification under Section 4(1) of the L.A.Act I of 1894
Administrator General	Wet	30-1	1. Mumtaz Tea Stall 2. .. .. .. 3. .. .. .. 4. .. .. 5. .. . . 6. T.Shanmugam, Cement Concrete Works."

In the award also, a specific reference is made to the effect that the fourth respondent as an "Interested Person" in the superstructure put up therein in Survey No.30/1. Subsequently, the Special Deputy Collector (Land Acquisition) has also issued a notice dated 20.7.1973 calling upon the petitioner to hand over possession of the land. In all the communications, there is reference about the business of the fourth respondent as concrete cement works. When the fourth respondent was facing an order of eviction, he seems to have approached the concerned

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authorities immediately and as early as on 26.6.1974, the Chairman, Tamil Nadu Housing Board addressed to the then Member of Loksabha to the effect that the request of the fourth respondent for allotment of the very same land viz., Survey No.30/1, Thiruvanmiyur Village was not feasible, since it is required for the execution of the Thiruvanmiyur Neighbourhood Scheme, but however, it was decided to allot a plot at Thiruvanmiyur Neighbourhood Scheme in order to enable him to run the business. Thus, a decision was taken even as early as on 26.6.1974, to allot a commercial plot to the fourth respondent. The above fact is substantiated by a further communication from the Government by way of a letter No.19461/HA-1/74-2 dated 20.11.1974. Both the communications referred above, proceed to the effect that the request of the fourth respondent for allotment of a plot in Survey No.30/1 cannot be considered, but however, an alternative plot will be allotted for him for commercial purposes. In fact, the Government in its letter dated 20.11.1974 has directed the fourth respondent to submit an application for the allotment of the land to the Tamil Nadu Housing Board. It is only under the said circumstances, the fourth respondent had submitted an application as early as on 18.12.1974.

In the light of the abovementioned discussion, the claims of the parties are crystalised as hereunder:-

Fourth respondent	Petitioner
a) He is described as an interested person even in the award as early as on 26.3.1973 by referring him that he is owning a superstructure.	
b) Again the fourth respondent was described as one of the interested persons in the award No.6 of 1973 dated 6.6.1973 pertaining to survey No.30/1.	
c) A notice dated 20.7.1973 was served upon the fourth respondent calling upon him to vacate and hand over the possession for the implementation of the Thiruvanmiyur Scheme.	His claim is based on the fact that if the plot No.3 is sold to a third party, it will affect his interest in carrying on the business in the adjacent shop.

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d) As early as on 26.6.1974, the Chairman, Tamil Nadu Housing Board informed the then Member of Loksabha about the decision of the Government to allot an alternative site to the fourth respondent for commercial purposes.	He is using the vacant site viz.,plot No.3 as a passage to reach the backyard of his premises owned by him bearing Door No.73-C, Lattice Bridge Road.
e)On 20.11.1974, the Government has informed the fourth respondent that his request for allotment of an alternative site for commercial purposes would be considered provided he submits an application to the Tamil Nadu Housing Board.	
f) After series of correspondences, provisional order of allotment was made on 27.2.1981 and following the same, a regular order of allotment was made on 6.4.1981.	

A comparative statement as set out above would disclose that the fourth respondent has preferential claim as against the petitioner. Thus the contention of the learned counsel for the petitioner on this aspect fails.

Point (ii):- Whether the power is traceable for allotment of the plot with reference to the provision of law?:-

Learned counsel for the petitioner contended that as per Section 39 of the Act everybody should be treated as equal and the power of the Board to dispose of the land is defined under Section 72 and any direction given under Section 155 of the Act should not defeat the object of the Act itself and accordingly, questioned the power of the Government in making allotment to the fourth respondent. Learned counsel for the petitioner also contended that inasmuch as the land belonging to the fourth respondent was not acquired, he cannot make any claim for allotment of the land in pursuance of the said acquisition.

In this connection, it is useful to refer Section 39 (a) of the Act as set out hereunder:-

> "39. Matters to be provided by housing or improvement schemes:- Notwithstanding anything contained in any other law for the time being in force, a housing or improvement scheme may provide for all or any of the following matters namely:-
>
> (a) the acquisition by purchase, exchange, or otherwise of any property necessary for or affected by the execution of the scheme;"

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A reading of the above provision discloses that the legislature thought it fit to incorporate the said provision, in such a manner so as to remedy a situation to deal with any property affected by the execution of the scheme. The power vests upon the Housing Board under Section 72 is general in nature, which deals about the manner in which the land should be disposed of. Section 155 of the Act is a residuary power which vests upon the Government to give such directions which are necessary to carryout the purpose of the Act. In the instant case, the Government has issued a direction by considering the fact that the fourth respondent is affected in the course of the execution of the scheme for which a separate provision is made viz., under Section 39 (a) of the Act and as such, the power is traceable to the said provision read with Section 155 of the Act. Thus, it is not correct to state that there is lack of power on the part of the Government to make allotment in favour of the fourth respondent. Even otherwise, the petitioner himself is making a claim to allot the land under discretionary power which vests upon the Government and in fact, he was able to succeed on an earlier occasion, viz., by obtaining an order of allotment in G.O.Ms.No.622, Housing and Urban Development Department dated 12.7.1995. Even the relief claimed in the above writ petition is to quash the impugned order and reallot plot No.3, which allotment was made at one point of time to the petitioner only in exercise of the discretion vested with the Government. The petitioner cannot now blow hot and cold and contend that the Government lacks power to allot a land to the fourth respondent whereas the allotment made in favour of him by the Government in exercise of discretionary power is sustainable in law. Thus, I am of the view that the impugned order cannot be set aside on the ground of lack of power traceable to the provision of law.

Point (iii):- Whether the fourth respondent has violated the terms and conditions of the allotment viz., suppressing the fact that he was owning plots already and if so, what is the consequences?:-

It was contended by the petitioner's counsel that the fourth respondent is not entitled for allotment of the plot since he has given a declaration to the effect that he is not owning any other house site though he was owning two house sites, viz., one at Kandansavadi and another one at Palavakkam. Since false declaration was made by him, the fourth respondent is not entitled for the allotment.

In respect of the two house sites said to have been owned by the fourth respondent, one house site is referrable to the house site comprised in survey No.40/1, Kandansavadi, Perungudi village. In this connection, a copy of the proceedings initiated under the Land Encroachment Act, 1905 dated 5.10.1974 issued to the fourth respondent is placed on record. The said communication discloses that a hut is in existence in the site and show cause notice was issued as to why action should not be initiated to evict the fourth respondent from the said site. Hence, it cannot be suggested that the fourth respondent is owning a house site at Kandansavadi, Perungudi village as contended by the petitioner,

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since the records disclose that the said site is a Government poramboke land and not a patta land and the fourth respondent is an encroacher therein. As regards the another house site said to have been owned by the fourth respondent viz., at Palavakkam village, it is not in dispute that the same was owned by the fourth respondent and the same was sold on 7.4.1981 whereas the declaration was made by him only on 9.4.1981. Since the fourth respondent has sold the house site at Palavakkam even prior to the date of declaration, it cannot be suggested that he has violated the terms and conditions of the allotment. Even otherwise, the first respondent has categorically stated in its counter-affidavit that as per G.O.Ms.No.2063, Housing and Urban Development Department dated 9.11.1979 that ownership of a house site is a bar for allotment of residential plots only and that too, the house sites should lie in a Municipal Corporation, Special Grade and 'A' Grade Municipalities or in any of the capital towns. In the abovesaid Government Order, guidelines are prescribed only in respect of allotment of residential plots/houses and in respect of commercial plots clause 12 of the said Order alone is applicable. As per the above clause, the practice as adopted till then should be continued, as the same would be advantageous to the Housing Board. Assuming that owning of a house site is a bar even in respect of an allotment of a commercial site, admittedly, the house site which was owned and disposed of by the fourth respondent on 7.4.1981, does not lie either in the Municipal Corporation or Special Grade and 'A' Grade Municipalities or in any other capital towns, which alone should be construed as a bar. A perusal of the description of the property as set out in the schedule to the sale deed dated 7.4.1981 clearly discloses that the said house site situates within the limit of Palavakkam Panchayat Board, which does not fall within the prohibition as contained in G.O.Ms.No.2063, Housing and Urban Development Department dated 9.11.1979.

For the reasons stated above, the allotment in favour of the fourth respondent on the ground of violation of the terms and conditions as well as the suppression of the fact that he was owning house sites cannot be interfered with.

Point (iv):- Whether the impugned order is unsustainable in law on the ground that though the application was submitted for a smaller extent, a larger extent of plot was allotted?

Learned counsel for the petitioner contended that even though the fourth respondent has chosen to submit an application indicating the extent of plot as approximately 1-1/2 grounds, the allotment of more than 3 grounds is bad in law and the said allotment is made for extraneous considerations. In this connection, it is useful to refer to the circumstances leading to the fourth respondent in submitting the application and obtaining an order of allotment. As stated supra, the fourth respondent who has put up superstructure in a property belonging to the Trust comprised in Survey No.30/1, Thiruvanmiyur village was subject to acquisition and a notice dated 26.3.1973 was issued treating him as one of the interested persons, to participate in the award enquiry.

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Subsequently, an award bearing No.6 of 1973 dated 6.6.1973 was passed by the Special Deputy Collector (Land and Acquisition) wherein the fourth respondent was described as one of the 'interested persons'. Further, a notice dated 20.7.1973 was issued by the Special Deputy Collector (Land and Acquisition) calling upon the fourth respondent to vacate and hand over the possession of the property which was acquired. The fourth respondent was resisting the eviction during the pendency of the land acquisition proceedings and also has chosen to submit a representation for the allotment of the very same land comprised in Survey No.30/1, Thiruvanmiyur village to enable him to carry on the business of cement concrete works. The then Chairman, Tamil Nadu Housing Board, by letter dated 26.6.1974, has informed the decision of the Government to the fourth respondent that the said land comprised in Survey No.30/1, Thiruvanmiyur village is essentially required for forming of 'Thiruvanmiyur Neighbourhood Scheme', but however, it was resolved to allot one auction plot for commercial purposes. The decision of the Government was again communicated to him through letter dated 20.11.1974 of the Deputy Secretary to Government. In the said communication of the Government, a specific direction was issued to him to submit an application for allotment of plot to the Chairman, Tamil Nadu Housing Board in the prescribed form. Subsequently, the fourth respondent has chosen to submit an application in the prescribed form on 18.12.1974. In the said prescribed form all the columns were filled up and as against the column of extent of plot, it is indicated as "approximately measuring 1-1/2 grounds". Subsequently, by letter dated 4.6.1976 of the Housing Board, the willingness of the fourth respondent with regard to the fixation of the cost was sought for, to which the fourth respondent has expressed his willingness on 29.6.1976. Thereafter, the Housing Board through its letter dated 13.10.1976 informed the fourth respondent that the matter is under consideration. Thereafter, further correspondences were entertained between the Housing Board as well as the fourth respondent but nothing turned out. In some of the correspondences, the fourth respondent has even indicated the various other plots by referring to the details of such plots in other areas. Finally, the Chairman, Tamil Nadu Housing Board through his communication dated 28.4.1980, has informed the fourth respondent that the request of the fourth respondent to allot a plot bearing No.281-A in Thiruvanmiyur Scheme is not possible, but however expressed its willingness to allot a commercial plot bearing No.454, Thiruvanmiyur Scheme measuring an extent of 2 grounds and 687 sq.ft. From the aforesaid correspondences, it is clear that though the application was filed originally in the year 1974, wherein the extent of plot was indicated as '1-1/2 grounds approximately', no decision was taken to allot any particular plot of specific extent till 28.4.1980, on which date, the fourth respondent was informed that he will be allotted a plot measuring an extent of 2 grounds and 687 sq.ft. Though the fourth respondent was informed as above, finally by provisional allotment order dated 27.2.1981 plot Nos.2 and 3 measuring an extent of more than 3 grounds was allotted which is totally a different plot other than the plot which was indicated in the communication dated 28.4.1980 of the Chairman,

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Tamil Nadu Housing Board. Thus, it is clear that the fourth respondent has nothing to do with the selection of plot in question and a decision was taken after series of correspondences with reference to the availability of plots at relevant point of time. Therefore, merely because in the year 1974, the fourth respondent has filled in the blank columns in the prescribed form to the effect that he requires a plot to an extent of nearly 1-1/2 grounds, he cannot be found fault with when a larger extent of plot was allotted. Hence, I am not inclined to accept the contention of the learned counsel for the petitioner in this regard.

Point (v):- Unjust enrichment by the fourth respondent:-

As regards the fixation of price is concerned, a specific contention is urged by the learned counsel for the petitioner that an unjust enrichment is accrued to the fourth respondent. There is no dispute that the price of plot which was fixed at the rate of Rs.26,000/- per ground in the regular allotment order dated 6.4.1981 was the actual price fixed by the Tamil Nadu Housing Board in respect of all commercial plots in the City of Chennai. In fact, when the matter was under correspondence, on 4.6.1976, the Tamil Nadu Housing Board has called upon the fourth respondent to express his willingness to accept the cost of the plot at the rate of Rs.15,000/- per ground pending fixation of final cost, to which the fourth respondent has expressed his willingness. Subsequently, the petitioner was called upon to express his willingness to accept the price of the plot at the rate of Rs.26,000/- per ground as disclosed in the communication dated 28.4.1980 which was accepted by the fourth respondent. There is nothing on record to suggest that the fourth respondent has obtained an order of allotment on 6.4.1981 for a lesser price than the price fixed at the relevant point of time in respect of other allottees. Immediately after the allotment of plot, the petitioner has started paying the instalments from 1981 onwards apart from the payment of initial deposit and the entire payment of instalments were completed even in the year 1991 itself. Merely because, the petitioner was able to secure an order of allotment of one plot viz., plot No.3 in the year 1995 and he was directed to deposit a higher amount representing the cost of the plot, which price was arrived at as per the prevailing rate of the year 1995, it cannot be construed that the fourth respondent has got an unjust enrichment upon the State exchequer. The impugned order dated 31.10.2003 came to be passed only in pursuance of the direction given by this Court to reconsider the matter afresh in the writ petitions filed by both the parties. In pursuance of the order passed by this Court, the matter was examined afresh and a finding is rendered to the effect that the allotment in favour of the fourth respondent was wrongly cancelled in G.O.Rt.No.167, Housing and Urban Development Department dated 16.4.1984 based on the allegation of the petitioner herein which was later on found to be an incorrect statement. Hence, the above point is answered in favour of the fourth respondent.

Point (vi):- Locus standi of the petitioner to maintain the above writ petition:-

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As discussed in the earlier paragraphs with reference to the preferential claim of the petitioner as well as the fourth respondent, I have clearly held that the petitioner does not have any vested right to challenge the allotment in favour of the fourth respondent. The fourth respondent, who has suffered consequent to acquisition of lands pertaining to Survey No.30/1, Thiruvanmiyur Village in the year 1973, has chosen to approach the authorities and finally his request was accepted and an order of allotment was made on 6.4.1981. The petitioner, who is an adjacent plot owner and carrying on business abutting plot No.3, has no right whatsoever to claim the said plot in question as a matter of right. Unlike the fourth respondent, who is one of the interested persons, when the housing scheme is executed within the meaning of Section 39 (a) of the Act, the petitioner is not an affected person and does not have any vested right to seek for allotment. Even in the representation dated 16.4.1981, the petitioner has mentioned that he was using the vacant plot viz., plot No.3 to reach the backyard of his premises situated at Door No.73-C, Lattice Bridge Road and if the said plot is about to be sold to a third party, it was requested therein that the same may be sold to him. From the records, it is clear that the petitioner has come forward with the said representation for the first time only on 16.4.1981 and as such, he has no locus standi to challenge the allotment order dated 27.2.1981 made in respect of the fourth respondent, who was continuously corresponding with the authorities from the year 1973 onwards. The present order dated 31.10.2003 dates back to the original order of allotment dated 6.4.1981 and the cost was arrived at with reference to the prevailing cost of the year 1981 and the fourth respondent has also started making payment in instalments from the year 1981 onwards and as such, the contention of the learned counsel for the petitioner does not find any merit. The allotment made in favour of the fourth respondent under the said circumstances cannot be challenged by the petitioner who is a total stranger. Though a contention is urged by the learned counsel for the petitioner that the point of locus standi is not pressed into service in the earlier writ petitions and in fact, at the instance of the petitioner, the earlier order of allotment was set aside and a fresh enquiry was conducted, that cannot be put against the fourth respondent herein to oppose the present writ petition on the ground of maintainability. This Court has not gone into the question of maintainability in the earlier proceedings. But however, when a specific objection is raised by the fourth respondent for the first time, the same has to be gone into with reference to the facts and circumstances of the case on hand. In view of the facts narrated above, I am of the clear opinion that the petitioner cannot maintain the writ petition itself.

11. Legal submissions:

Learned counsel for the petitioner has placed reliance upon the various decisions of the Apex Court while challenging the impugned order which are dealt with as hereunder:-

1. COMMON CAUSE, A REGISTERED SOCIETY vs. UNION OF INDIA AND OTHERS (1996 (6) SCC 530)

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The above decision was rendered pertaining to the allotment of petrol pumps by the then Minister of State for Petroleum and Natural Gas, Government of India, in respect of 15 persons. The apex Court rendered a finding therein to the effect that the then Minister acted in a biased manner to favour those allottees and held that the said allotment orders are wholly vitiated. The said case is not applicable to the facts on hand.

2. TVL SUNDARAM GRANITES vs. IMPERIAL GRANITES LTD., AND OTHERS (1999 (8) SCC 150):

The above decision is cited for the proposition of law that the State has to exercise the discretion in a fair and honest manner. Admittedly, in the instant case, no material is produced before this Court that the exercise of the discretion by the State is not in a fair and honest manner or for any other extraneous reasons except bald allegations in the affidavit filed in support of the writ petition.

3. UNITED INDIA PERIODICALS PVT LTD vs. M/s.M & N PUBLICATIONS LTD AND OTHERS (1993 (1) SCC 446):

The above decision deals with the proposition of law that the decision making process is open to judicial review and if the process is violative of Article 14, the Court can strike down the decision. Inasmuch as a finding is rendered in the foregoing paragraphs that there is no arbitrariness on the part of the Government in the matter of allotment of land to the fourth respondent, the above decision is not applicable to the case on hand.

4. V.PURUSHOTHAM RAO vs. UNION OF INDIA AND OTHERS (2001 (10) SCC 305):

The above decision is also rendered pertaining to the allotment of a retail outlet of petroleum products and the Apex Court in the said decision has taken the view that the exercise of the discretionary power should not be arbitrary, capricious or for any extraneous considerations. The said decision is not applicable to the facts on hand, in view of the factual findings rendered in the earlier paragraphs.

5. B.R.CHOWDHURY vs. INDIAN OIL CORPORATION LTD AND OTHERS (2004 (2) SCC 177):

The above decision is rendered by the Apex Court in upholding the termination of the dealership which came to be passed for the suppression of a material fact by the dealer at the time of submitting an application. In the case on hand, I have already held that the fourth respondent did not suffer any bar in seeking allotment of plot and on the date of making a declaration, and there was no suppression on the part of the fourth respondent and as such, the said decision is not applicable to the case on hand.

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6. BIBHUDATTA MOHANTY vs. UNION OF INDIA AND OTHERS (2002 (4) SCC 16):

Learned counsel has cited the above decision to substantiate that the authorities should not take different stand in the counter-affidavit pertaining to the very same issue. In the case on hand, the respondents have merely taken a stand to sustain the orders passed on earlier occasions whenever the said orders were challenged in the earlier writ petitions. As regards the factual aspects are concerned, the Government took consistent stand through out, but however, chosen to cancel the allotment made in favour of the fourth respondent on one occasion on the basis of the allegation made by the petitioner herein which was found as untrue in the subsequent enquiry. Thus, there is nothing on record to suggest that total inconsistent stand was taken by the Government on various occasions in the present legal proceedings and hence the above decision has no relevance to the present case.

12. Learned counsel has also placed reliance upon the decisions of the Apex Court in RAM AND SHYAM COMPANY vs. STATE OF HARYANA AND OTHERS (1985 (3) SCC 267), MAHESH CHANDRA vs. REGIONAL MANAGER, U.P. FINANCIAL CORPORATION AND OTHERS (1993 (2) SCC 279), M.I.BUILDERS PVT LTD vs.RADHEY SHYAM SAHU AND OTHERS (1999 (6) SCC 464) and BANGALORE MEDICAL TRUST vs. B.S.MUDDAPPA AND OTHERS (1991 (4) SCC 54) to substantiate that the State largesse should be distributed only by public auction by giving an opportunity to all the parties concerned and the discretion should be exercised objectively, fairly and non-arbitrarily and to ensure that the best price is collected. The above mentioned decisions are not applicable to the present case, since the allotment of plot was made in favour of the fourth respondent in exercise of the discretion vest upon the Government in terms of Section 39 (a) and Section 155 of the Act and as such, the said decisions have no relevance.

13. For the foregoing reasons, the above writ petition is dismissed as devoid of merits. No costs. Consequently, connected WPMPs are also dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1.The Secretary to Government,
  State of Tamil Nadu
  Housing and Urban Development,
  Fort St. George,
  Chennai-600 009.

2.The Managing Director,
  Tamil Nadu Housing Board,
  Anna Salai, Nandanam,
  Chennai-600 035.

3.The Allottees Service Manager,
  Tamil Nadu Housing Board,
  Besant Nagar Division,
  Chennai-600 020.

+ 1 CC to M/s.LA Law, Advocate SR NO 15635

+ 1 CC to Mr.AR.L.Sundaresan, Advocate SR NO 15840

+ 1 CC to Mr.D.Veerasekaran, Advocate SR NO 15852

+ 1 CC to Govt. Pleader SR NO 15965

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